FILE COPY
Office Supreme Court U. S.
FILED
OCT 8 1903
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

No. 157.

THE STATE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, ET AL., APPELLANTS,

versus

THE COMPTOIR NATIONAL D'ESCOMPTE DE PARIS

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF FOR DEFENDANT.

HARRY H. HALL,
Solicitor of Complainant.

OCTOBER, 1903.

THOMASON, PRINT, 526-528 NATCHEZ ST.

SUPREME COURT OF THE UNITED STATES.

No. 157.

THE STATE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, ET AL., APPELLANTS,

versus

THE COMPTOIR NATIONAL D'ESCOMPTE DE PARIS.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF FOR DEFENDANT.

May it please the Court:

The ISSUE is as follows:

Complainant, a corporation organized under the laws of the Republic of France, and domiciled in Paris, brings this Bill of Complaint against the Board of Assessors for the Parish of Orleans, the City of New Orleans, and the State Tax Collector, averring:

That, since 1895, complainant has established and maintained in the City of New Orleans an office or agency for the purpose of conducting a business of buying and selling foreign exchange.

That, for the purposes of said exchange business, and as an incident thereof, it loans money on the agricultural products of Louisiana and adjacent States, in every instance, however, obtaining the money thus loaned by the sale of its exchange on New York, or other commercial centers of the world.

That it has no capital in the City of New Orleans, and that the credit and capital thus employed by it in thus dealing in exchange is situated and exists wholly without the State of Louisiana and notably in the City of Paris, France.

That its aforesaid business was distinctly recognized by the Louisiana Legislature, which levied thereon a license tax of 2½% on the gross *profits* of all such exchange.

That complainant has regularly paid this and all other taxes legally assessed upon its property.

That, in compliance with the statute, complainant made due return of its property for taxation for the year 1901, to-wit:

Office furniture *$1,000,*
Money in possession, on deposit or in hand *$20,000,*

but that the Board of Assessors levied for that year against complainant the further assessment:

"Money loaned on interest, all credits, and all bills re-
" ceivable for money loaned or interest, or advanced, or for
" goods sold, $175,000."

That without just cause, defendants refuse to comply with complainant's due and legal demand to cancel said assessment; that complainant will pay the tax upon the $21,000 returned by it; that complainant has retained "*no credits or bills receivable for moneys loaned or interest*

advanced," but whenever it has so advanced or loaned money, the same was advanced or loaned directly by granting to the borrower thereof a credit directly upon complainant's domicile in Paris, and that it does not hold in the City of New Orleans or State of Louisiana any bills receivable or evidences of indebtedness.

That, under the Constitution, laws and jurisprudence of the United States and State of Louisiana, the power of taxation of said State and of the City of New Orleans is limited to persons and property within the State, and that no tax can be legally levied upon property not actually or constructively within the State; that jurisdiction is as essential to taxation as to the validity of a judgment, and that no tax can be validly levied when the thing sought to be taxed is not amenable to the authority of the government which levies the tax, and such legislation or attempted construction thereof, is violative of the Fourteenth Amendment; and complainant asks for an injunction and that said assessment be decreed to be illegal, unconstitutional, null and void, and that it be cancelled from the said assessment rolls. (Transcript, p. 1 *et seq.*)

THE ANSWER.

Denies that complainant retains no capital in the City of New Orleans, or that said money, when there received, is remitted at once to Paris, averring the fact to be that when the debtor pays money to complainant in New Orleans, it retains the same there to loan to other persons. It denies that notes and bills taken by complainant were sent to Paris, but avers that "*even if it were the case that "said notes and bills were remitted to France, as alleged in*

" complainant's bill, that said notes and bills would yet be liable " to taxation in the State of Louisiana, in view of the nature of " these transactions," etc. (My italics).

STATEMENT OF FACTS.

State vs. Comptoir National, 51 La. An. 1272, was a suit brought to recover $42,000, alleged to be due by defendant as license taxes for carrying on in New Orleans a *banking* business during the years 1895, 1896, 1897, 1898. The Supreme Court held that defendant was not doing a *banking* business; that it was doing an exchange business; that, prior to 1898, no license tax in Louisiana had been laid on such business, and that, by Act 127 of 1898, the Legislature levied for the first time, for 1899, a license tax upon such business for the purpose of meeting the requirements of defendant's operations in New Orleans. The Court found (A. D. 1899) in reference to the Comptoir's method of transacting its said business in New Orleans:

"In order to procure the money to transact this business, " the defendant sells, in New York, drafts on London, Paris, " Germany, or wherever they can be drawn to best advan- " tage, and then, to transfer to New Orleans, when it is " needed, the money thus realized in New York, defendant " sells, in New Orleans, its drafts on New York against " said money which is there deposited to its credit.

" Defendant receives no deposits in New Orleans and " accumulates no funds here save in the manner and for " the purposes as thus stated. It makes no discounts of " ordinary commercial paper, and lends no money upon " mortgage or other security save cotton or grain which is " *en route* to foreign countries and the bills of lading for " which are transferred to it. And the business thus de- " scribed appears to have been the business contemplated " when the agency was established here in 1895-6." (P. 1275).

Acts of Louisiana, 127 of 1898, Section 2: "Be it further "enacted, etc., that all banks, banking associations, corpo- "rations or companies who may, in their own name or in "the name of their representatives, engage in this State in "the business of lending money or dealing in exchange, "shall pay a license of 2½% on the gross profits of all "money loaned and all exchange bought, and all exchange "sold, and all other business done, provided no license "shall issue as provided for in this Section, for less than "$1,000.00; provided that the minimum license of One "Thousand Dollars shall not apply to those corporations or "companies lending money secured solely by mortgage on "real estate."

ALBERT BRETON, complainant's New Orleans agent, from 1895 to 1901, says: That its business there is that of selling exchange, and *for the purpose thereof*, it loans money on bills of lading and warehouse receipts, obtaining the money therefor by selling foreign exchange on Europe; that it has no fixed capital in New Orleans, but an average of $20,000 deposits in the local banks; that **Act 127 of 1898** was adopted at the suggestion of witness, after full discussion before the Ways and Means Committee, and with the understanding that the tax imposed by said Act would cover all taxes to be paid by the Comptoir in New Orleans; that under this Act, the Comptoir has paid annually a license tax of from $2500 to $3500. P. 19.

That the average cash balances in local banks aggregate $20,000. Pp. 23-27.

That the capital of the Comptoir remains in Paris and anything drawn in New Orleans comes from the surplus in Paris. P. 27.

That the object of this business is to pay in advance, by sale of foreign exchange, money needed for purchase

of cotton, etc., and to facilitate local merchants in handling through New Orleans products bought in the country, and to employ funds arising from exchange on Europe, sold in advance at higher rates, with a view to remitting the same funds back to Europe at lower rates. P. 20.

That the profits from foreign exchange form the difference between the net rate of selling and the net rate at which it can rebuy to cover such sales. P. 21.

That the Comptoir in New Orleans, for money required, sells exchange on Paris, London or Berlin, and the amounts so drawn are remitted back to those points by a foreign exchange transaction. P. 22.

That every transaction made begins by foreign exchange and ends by foreign exchange. Whatever money is loaned is raised by exchange. P. 29.

That when a customer wants to use a credit for a fixed period of time, it opens for his account a credit to be utilized by his drawing on Paris or London, and the amounts drawn against such credits are to be remitted (*from abroad*) to Paris or London before the maturity of the debts.

That when it uses foreign credit, the drafts issued never come back to America. P. 22.

That the Comptoir in New Orleans advanced money in two ways, either by opening a credit in favor of its borower on the Comptoir in London or Paris, when he draws on that credit and sells his draft; or, if the loan is for a short period, the Comptoir sells its draft in New Orleans and hands him the money. He then is overdrawn and the Comptoir holds his paid cheques to evidence the overdraft. P. 32.

When the money loaned is refunded, he does not take

back his cheques, because the Comptoir keeps with him an account current which varies every day. P. 32.

That when a customer borrows money he draws a cheque and no note or due bill is given. P. 28.

That its customers keep simply overdrawn accounts; that its credits are issued and drawn on Paris and London, and are to be reimbursed in these places at respective maturities. P. 21.

During the years 1900 and 1901, the Comptoir received no promissory notes or bills receivable for moneys loaned, because its clients preferred to be and insisted on being simply overdrawn, so as to be able to reimburse the advances, in whole or in part, whenever it might suit their convenience so to do. P. 22.

By drawing cheques they keep a sort of account current constantly overdrawn, which they repay when they please, and they only pay interest on their daily overdraft. P. 33.

That the change in the method of doing business in 1900 and 1901, from receiving non-negotiable notes, allowing simply overdrawn accounts, as done by the other banks, was due to complaints of our customers who wanted to be allowed to be overdrawn instead of requiring notes. Pp. 23–31.

The Commercial National Bank transacts its foreign exchange business in the same manner by taking cheques. P. 35.

The Whitney National Bank, by taking receipts. P. 36.

The authorization for draft by borrower on Comptoir in Paris, London, Berlin or elsewhere in Europe, is at p. 38. Likewise Report of Special Master, Judge W. W. Howe. P. 43.

The Comptoir has never before had this assessment levied against it. P. 29.

ARGUMENT.

From the foregoing the following facts are apparent:

1st. The Comptoir's agent in New Orleans pays for it, annually, a license tax of from $2500 to $3500. He further pays the assessed taxes on $20,000, the average of its fluctuating bank balances in that city. Further, it pays taxes upon the value of its office furniture.

2d. It has no bills or promissory notes in the City of New Orleans, the money loaned by it being represented by paid cheques and the indebtedness being an overdrawn account current and by bills of lading *en route* to Europe.

3d. The Comptoir's business in New Orleans is the *exchange* business. The profit in that business is the result of its great credit in the money markets of the world and its unusual facilities for buying and selling foreign exchange to the best advantage.

4th. It only loans money for the purpose of making an exchange transaction, its loan being a mere incident and the exchange the principal object of the transaction.

5th. The Comptoir, in New York, sells foreign exchange on London, Paris, Berlin, or elsewhere, and places the proceeds of sale thereof in New York to the credit of the New Orleans office. It may be readily understood that the foreign bills of the Comptoir command a higher price than the bills of exchange of or foreign drafts of a merchant.

A purchaser of cotton in New Orleans applying to the Comptoir for money wherewith to pay the purchase price of cotton which he has bought to ship abroad, delivers to it

his draft on his foreign consignee with bill of lading attached. The Comptoir buys this draft or private bill of exchange, at a profit over the price at which it sold its own exchange in New York. To pay for this private bill of exchange, it sells to a New Orleans bank its draft on the fund to its credit in New York and hands the proceeds to the shipper of cotton.

If a larger credit covering many transactions is required, the Comptoir gives to the borrower a letter of credit authorizing him to draw directly on the Comptoir in Paris or London or Berlin, or elsewhere.

6th. When the borrower returns to the Comptoir, in New Orleans, the money loaned, it at once buys said exchange on that foreign city where it can buy to best advantage.

7th. Procuring all funds by selling of exchange, and remitting all loans by purchase of exchange, there is no capital or money of the Comptoir in New Orleans, except such fluctuating balances as arise from delays in remitting. This average balance has been judicially determined to be $20,000. (**Comptoir vs. Assessors, 52 La. An. p. 1319**).

8th. The Comptoir, prior to 1900, took, for the exchange loans, non-negotiable notes. Since that time, in compliance with the demand of its customers and in conformity to the custom of the other banks, which either take receipts or permit an overdraft by cheques, it has received no notes or other evidences of indebtedness.

9th. In buying the merchant's private bill of exchange the same is forwarded by the Comptoir, *with bill of lading attached.* P. 20.

Of course, in advancing the purchase price, a margin is,

reserved. The real evidence of debt, the merchant's draft, and its security, the bill of lading, go immediately to Europe. Payment there extinguishes the debt and leaves a balance of the margin *due to the merchant in New Orleans. The cheque drawn by him does not evidence the debt, but is merely a memorandum of its amount.*

10th. But, neither prior to 1900, when it took non-negotiable promissory notes as evidences of its exchange loans, nor during the time covered by this suit—when the said loans were evidenced by overdrawn accounts current,—did it ever hold the sums thus represented, when paid, for continued investment in New Orleans, but it invariably bought exchange with said funds. Its business was buying and selling exchange, not lending money. It only loaned money so that it might sell exchange. It sought no transactions which did not originate and terminate in exchange.

There is no equity in the claim for payment of a tax. The Comptoir gives the benefit of its world-wide credit to the commerce of New Orleans. If its merchants obtain cheaper exchange and lower rates of interest, the advantage comes from the markets of the world and not at the expense of local concerns.

The matter then for determination is, whether money obtained by a French corporation by sale in New York of its exchange on London or Paris, loaned to a borrower in New Orleans in form of a bill on New York, can be taxed in New Orleans because the New Orleans agent holds a memorandum of the loan or cheque showing an overdrawn account current!

Or whether money obtained for the New Orleans loan, by authorizing the borrower to draw on a letter of credit opened for him in Paris, can be so taxed!

Or whether a loan represented by the borrower's bill of exchange on his Liverpool vendee, with bill of lading attached, can be so taxed!

THE LAW.

I submit:

I.

IT IS NOT WITHIN THE POWER OF A STATE TO TAX PROPERTY UNLESS THE SAME IS ACTUALLY, OR BY CONTEMPLATION OF LAW, WITHIN ITS JURISDICTION.

St. Louis vs. Ferry Company, 11 Wallace, 429. "It has "been said that the power of taxation for the purposes of "the commonwealth, is a part of a government sovereignty "and is inseparable from it. It is for the Legislature to "decide what persons and property shall be reached by the "exercise of this function, and in what proportions and by "what processes and instrumentalities taxes should be as- "sessed and collected. The authority extends over all per- "sons and property within the sphere of its territorial "jurisdiction.

"When called into activity, there can be no limits to the "degree of its exercise except what is found in the wisdom "of the law making power, and the operation of those pre- "sumptive principles which lie at the foundation of all "free government.

"Where there is jurisdiction neither as to person nor "property, the imposition of a tax would be *ultra vires* and "void. If the Legislature of a State should enact that the "citizens or property of another State or power should be "taxed in the same manner as the persons and property "within its own limits and subject to its authority, or in "any other manner whatsoever, such a law would be as

" much a nullity as if in conflict with the most explicit " constitutional inhibition. Jurisdiction is as necessary to " valid legislative as to valid judicial action."

State Tax on Foreign Held Bonds, 15 Wallace, 300.

" The decision is, nevertheless, authority for the doctrine " that property lying beyond the jurisdiction of the State " is not a subject upon which her taxing powers can be " legitimately exercised. Indeed, it would seem that no " adjudication should be necessary to establish so obvious " a proposition.

" The power of taxation, however vast in its character " and searching in its extent, is necessarily limited to sub- " jects within the jurisdiction of the State. These subjects " are persons, property and business.

" Whatever form taxation may assume, whether as du- " ties, imposts, excises or licenses, it must relate to one of " these objects. It is not possible to conceive of any other, " though, as applied to them, the taxation may be exercised " in a great variety of ways; it may touch property in " every shape, in its natural condition, in its manufactured " form, and in its various transmutations. And the amount " of the taxation may be determined by the value of the " property, or its use, or its capacity or its productiveness.

" It may touch property in every shape; it may touch " business in the almost infinite forms in which it is con- " ducted; in professions, in commerce, in manufacture, " and in transportation.

" Unless restrained by provisions of the Federal Consti- " tution the power of the State as to the mode, form and " extent of taxation is unlimited where the subjects to " which it applies are within her jurisdiction.

" Corporations may be taxed, like natural persons, upon " their property and business. But debts owing by cor- " porations, like debts owing by individuals, are not prop- " erty of the debtors in any sense. They are obligations " of the debtors, and only possess value in the hands of the " creditors. With them they are property, and in their hands " they may be taxed. To call debts property of the debtors " is simply to misuse terms. All the property there can be,

" in the nature of things, in debts of corporations, belongs " to the creditors to whom they are payable, and follows " their domicile wherever that may be. The debts can " have no locality separate from the parties to whom they " are due.

" This principle might be stated in many different ways " and supported by citations from numerous adjudications; " but no number of authorities and no form of exception " could add anything to its obvious truth, which is recog- " nized upon its simple statement." (P. 319).

McCullough vs. State of Maryland, 4 Wheaton, 428, Marshall, C. J.:

" It is admitted that the power of taxing the people and " their property is essential to the very existence of the " government and may be legitimately exercised upon the " objects to which it is applicable to the utmost extent to " which the government may choose to carry it. The only " security against the abuse of this power is found in the " government itself. In imposing a tax, the Legislature " acts upon its constituents. This is, in general, a suffi- " cient security against erroneous and oppressive taxation."

United States vs. Erie Railroad Company, 106 U. S. 327. " There are limitations upon the powers of all governments " without any expressed designation of them in the organic " law; limitations which inhere in their very nature and " structure, and this is one of them—that no rightful au- " thority can be exercised by them over alien subjects or " citizens resident abroad or over their property there sit- " uated. This doctrine may be said to be axiomatic, and " courts in England have felt it so obligatory upon them " that where general terms, used in Acts of Parliament, " seem to contravene it, they have narrowed the construc- " tion to avoid that conclusion." P. 334.

Hagan vs. Reclamation District, 111 U. S. 701. "The " Court repeats with approval the principles announced in " State Tax on Foreign Held Bonds, 15 Wallace, 300-319."

Erie Railroad vs. Pa., 153 United States, 628, *held:*

" That the Commonwealth of Pennsylvania cannot, consist-
" ently with the Constitution of the United States,
" impose upon the New York, Lake Erie and Western R.
" R. Co., the duty, when paying, in the City of New York,
" the interest due upon script, bonds, or certificates of in-
" debtedness, held by residents of Pennsylvania, of deduct-
" ing from the interest so paid, the amount assessed upon
" bonds and moneyed capital in the hands of such residents
" of Pennsylvania." *Syllabus, p. 629.*

The Court said: "The money in the hands of the Com-
" pany in New York to be applied by it to the payment of
" interest, which, by the terms of the contract, is payable
" in New York and not elsewhere, is property beyond the
" jurisdiction of Pennsylvania; and Pennsylvania is without
" power to say how the corporation holding such money in
" another State shall apply it, to inflict a penalty upon it
" for not applying it as directed by its Statutes; and
" specially may not Pennsylvania, directly or indirectly,
" interpose between the corporation and its creditors, and
" forbid it to perform its contract with creditors according
" to its terms and according to the law of the place of per-
" formance. No principle is better settled than the power
" of a State, even its power of taxation in respect to prop-
" erty is limited to such as is within its jurisdiction. **State**
" **Tax on Foreign Held Bonds, 15 Wall. 300-319; Railroad**
" **Company vs, Jackson, 7 Wall. 262; St. Louis vs. Ferry**
" **Company, 11 Wallace, 423; Delaware R. R. Tax, 18 Wall.**
" **206.**" P. 646.

Dewey vs. Desmoines, 173 U. S. 193. In this case the Statutes of Iowa authorized a personal judgment against the owner for the paving of a street abutting upon his property; and a personal judgment was obtained against him for the amount of such assessment. This Court reversed the Decree of the Supreme Court maintaining the validity of such judgment.

The Court, referring with approval to its former adjudications, said:

"The power to tax is, however, limited to persons, prop-
" erty, and business within the State, and it cannot reach
" the person of a non-resident. A State can no more sub-
" ject to its power a single person or a single article of
" property whose residence or legal situs is in another State,
" than it can subject all the citizens or all the property of
" such other State to its power. These are elementary
" propositions, but they are referred to only for the purpose
" of pointing out that a Statute imposing a personal lia-
" bility upon a non-resident to pay such an assessment as
" this, oversteps the sovereign power of a State." P. 204.

Louisville and Jeffersonville Ferry Co. vs. Kentucky, 188 U. S. p. 385: "A franchise granted by the proper au-
" thorities of Indiana, for maintaining a ferry across the
" Ohio River from the Indiana shore to the Kentucky shore,
" is an Indiana franchise, is an incorporeal hereditament
" derived from, and having its legal situs for the purposes
" of taxation in Indiana. The taxation of the Indiana
" franchise by Kentucky would amount to a deprivation
" of property without due process of law, in violation of
" the provisions of the 14th Amendment." *Syllabus*, p. 385.

The Court said: "There is, in our judgment, no escape
" from the conclusion that Kentucky thus asserted its au-
" thority to tax a property right and incorporeal heredita-
" ment which has its situs in Indiana. While the mode,
" form and extent of taxation are, speaking generally,
" limited only by the wisdom of the Legislature, that power
" is limited by a principle inhering in the very nature of
" Constitutional Government, namely, that the taxes im-
" posed must have relation to a subject within the jurisdic-
" tion of the taxing Government." P. 396.

Railey vs. Assessors, 44 La. An. 765 (decided in 1892):
" 'The power of taxation, however vast in its character
" and searching in its extent, is necessarily limited to sub-
" jects within the jurisdiction of the State. These subjects
" are persons, property and business. Whatever form taxa-
" tion may assume, whether as duties, imposts, excises or

" licenses, it must relate to one of these subjects. It is not " possible to conceive any other, though as applied to them " the taxation may be exercised in a great variety of ways.' " 15 Wall. 300, 11 An. 268; 4 Woods, 206, 43 Maine, 497; " 11 N. Y. 563. 'Debts are not property. A non-resident " creditor of a city cannot be said to be, in virtue of the " debt which it owes him, a holder of property within its " limits.' Desty on Taxation, Vol. I, Par. 328; 96 U. S. " 432." P. 768.

II.

WHILE TANGIBLE PERSONAL PROPERTY, BY A FICTION OF LAW, HAS BEEN SAID TO FOLLOW THE DOMICILE OF ITS OWNER, IT MAY BE TAXED AT ITS ACTUAL "SITUS;" BUT IT HAS NEVER BEEN HELD THAT AN INCORPOREAL THING, A MERE ABSTRACTION, SUCH AS THE NAKED OBLIGATION TO PAY A DEBT, COULD BE SO TAXED. FOR AN INCORPOREAL THING, BEING AN ABSTRACTION, CAN HAVE NO "SITUS."

State Tax on Foreign Held Bonds, 15 Wallace, 300: "It is undoubtedly true that the actual *situs* of the per- " sonal property which has a visible and tangible exist- " ence, and not the domicile of its owner, will, in many " cases, determine the State in which it may be taxed. The " same thing is true of public securities consisting of State " bonds and bonds of municipal bodies and circulating " notes of banking institutions; the former *by general* " *usage have acquired the character of and are treated as prop-* " *erty in the place where they are found*, though removed " from the domicile of the owner; the latter are treated " and pass as money wherever they are; but other personal " property, consisting of bonds, mortgages and debts gen- " erally, has no *situs* independent of the domicile of the " owner, and certainly can have none where the instru- " ments, as in the present case, constituting the evidences of " debt, are not separated from the possession of the owners." P. 323.

MORTGAGES AND BONDS. NEGOTIABLE NOTES.

Kirtland vs. Hotchkiss, 100 U. S. 491. The Court cites with approval the case of *McCullough vs. State, 4 Wheaton, 428; St. Louis vs. Ferry Co., 11 Wallace, 423; State Tax on Foreign Held Bonds, 15 Wallace, 300,* and says:

"We perceive no reason to modify the principles announced in these cases or to question their soundness. They are fundamental and vital in the relations which, under the Constitution, exist between the United States and the several States. Upon their strict observance depends in no small degree the harmonious and successful working of our complex system of government, Federal and State. Plainly, therefore, our only duty is to inquire whether the Constitution prohibits a State from taxing in the hands of one of its resident citizens, a debt held by him upon a resident of another State, and evinced by the bond of the debtor, secured by a deed of trust or mortgage upon real estate situated in the State in which the debtor resides.

"The question does not seem to us to be very difficult of solution. The creditor, it is conceded, is a permanent resident within the jurisdiction of the State imposing the tax. The debt is property in his hands, constituting a portion of his wealth upon which he is under the highest obligation, in common with his fellow-citizens of the same State, to contribute for the support of the government whose protection he enjoys.

"That debt, although a species of intangible property, may, for the purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. It is none the less property because its amount and maturity are set forth in a bond. That bond, wherever actually held or deposited, is only evidence of the debt, and if destroyed, the debt—the right to demand payment of the money loaned, with the stipulated interest—remains. Nor is the debt, for the purposes of taxation, affected by the fact that it is secured by mortgage upon real estate situated in Illinois.

"The mortgage is but a security for the debt, and, as "held in State Tax on Foreign Held Bonds, the right of "the creditor to proceed against the property mortgaged, "upon a given contingency, to enforce by its sale the pay- "ment of his demand—has no locality independent of the "party in whom it resides. It may undoubtedly be taxed "by the State when held by a resident therein. The debt, "then, having its situs at the creditor's residence, both he "and it are, for the purposes of taxation, within the juris- "diction of the State." Pp. 497, 498 and 499.

Saving Society vs. Multnomah County, 169 U. S. 421:

"A statute of Oregon taxing mortgages of lands in that "State to the mortgagees in the county where the land "lies, does not, as applied to mortgages owned by citizens "of other States, and in their possession outside of the "State of Oregon, contravene the 14th Amendment of the "Constitution of the United States." Syllabus, p. 421.

Citing the decisions of the Courts of Oregon, this Court said:

"Notwithstanding this, it has been held both by the "Supreme Court of the State and by the Circuit Court of "the United States for the District of Oregon, that the "State has the power to tax mortgages, though owned and "held by citizens and residents of other States, of lands in "Oregon." P. 426.

This Court, further, with approval, quotes from the decision of Judge Deady in **Dundee vs. School District, 10 Sawyer, 52,** as follows:

"A mortgage upon real property in this State, whether "considered as a conveyance of the same, giving the cred- "itor an interest in or right to the same, or merely a con- "tract giving him a lien thereon for his debt and the "power to enforce the payment thereof by the sale of the "premises, is a contract affecting real property in the "State, and dependent for its existence, maintenance and "enforcement, upon the laws and tribunals thereof, and

" may be taxed here as any other interest, right to or " power over land." P. 427.

This Court says: "The State may tax real estate mort- " gaged, as it may all other property within its jurisdic- " tion, at full value. It may do this either by taxing the " whole to the mortgagor, or by taxing to the mortgagee " the interest therein represented by the mortgage, and to " the mortgagor the remaining interest in the land. And " it may, for the purposes of taxation, either treat the " mortgage debt as personal property, to be taxed, like " other choses in action, to the creditor at his domicile; or " to the mortgagee's interest in the land as real estate to " be taxed to him, like other real property at its situs." P. 427.

" This Court has always held that a mortgage of real " estate made in good faith by a debtor to secure a private " debt is a conveyance of such an interest in the land as " will defeat the priority given to the United States by Act " of Congress in the distribution of the debtor's estate." P. 428.

Pullman Palace Car Company vs. Pennsylvania, 141 U. S. p. 18: "The Court affirmed a decision of the Supreme " Court of Pennsylvania, maintaining the validity of a tax " imposed upon the capital stock of the plaintiff engaged " in the transportation of freight or passengers within that " State, said capital having been taxed as the basis of " assessment, such proportion of its capital stock as the " number of miles of railroad over which its cars were run " within that State bore to the whole number of miles in " that and other States over which its cars are run."

The Court said: "A nation within whose territory *any* " *personal property is actually situated* has an entire dominion " over it while therein, in point of sovereignty and juris- " diction, as it has over immovable property situate therein."

" For the purpose of taxation, as has been repeatedly " affirmed by this Court, personal property may be sepa- " rated from its owner, and he may be taxed on its amount " at the place where it is, although not the place of his own

" domicile, and even if he is not a citizen or resident of " the State which imposes the tax." P. 22. (My italics).

" The tax on the capital of the corporation, on account of " its property within the State, is, in substance and effect, " a tax on that property." P. 25.

Mr. Justice Bradley, with whom concurred *Mr. Justice Field and Mr. Justice Harlan, dissenting*, said: " The State " can no more tax the capital stock of a foreign corporation " than it can tax the capital of a foreign person. Pennsyl- " vania cannot tax a citizen and resident of New York, " either for the whole or any portion of its general property " or capital. It can only tax such property of that citizen " as may be located and have a situs in Pennsylvania. " State Tax on Foreign Bonds, 15 Wall. 300. And it is " exactly the same with a foreign corporation. Its capital, " as such, is not taxable. Gloucester Ferry Co. vs. Penn- " sylvania, *qua supra*. To hold otherwise would lead to the " most oppressive and unjust proceedings. It would lead " to a course of spoliation and reprisals that would endanger " the harmony of the Union." P. 36.

A MORTGAGE, so far as taxation is concerned, is a mere *security*. Hence, the question of the situs of notes and bonds is generally held not to be affected by the fact that the paper was or was not secured by mortgage, or, if so secured, by the location of the mortgaged premises. *15 Wall. 300; 51 N. J. L. 140; 100 U. S. 491; 42 Conn. 426; 19 Am. Rep. 546; 12 Iowa, 539; 26 N. J. Law, 564; 68 Ind. 247; 3 Colo. 349.*

Some courts, however, proceeding on the theory that a *mortgage* is an *interest in land*, have held it taxable in the State where the land lies, although held by a non-resident. *11 Oregon, 67; 50 Am. Rep. 462; 91 Mich. 78; 1 Clarke Ch. N. Y. 42; 52 Pa. State, 140; 123 Pa. State, 594; 72 Pa. State, 72; 66 Pa. State, 73.*

The general rule is, that DEBTS FOLLOW THE PERSON OF THE CREDITOR, and are to be taxed at his domicile. *4 Woods (U. S.) 206; 38 Cal. 461; 42 Conn. 426; 19 Am. Rep. 546; 43 Ga. 336; 50 Ga. 387; 108 Ill. 113; 14 Ind. 354; 59 Md. 472; 26 Am. Rep. 87; 68 Md. 247; 54 Iowa, 57; 65 Iowa, 110; 4 Busch Ky. 135; 8 B. Monroe Ky. 1; 41 La. An. 645; 41 La. An. 1015; 44 La. An. 760; 50 Md. 354; 25 Ohio State, 10; 3 Mo. C. S. C. 374; 27 Gratt. Va. 354; 25 Cal. 601; 33 Ga. 113; 2 Oregon, 327; 13 S. W. Rep. 30; 75 Texas, 476.*

In the taxation of personal property, two inconsistent doctrines often come into conflict; the one, *mobilia sequuntur personam*, commanding that the property shall be taxed at the owner's domicile, on the theory that the personalty has no other *situs;* the other, that it shall be taxed like real property, where it is situated. Ordinarily, the first rule will prevail, and, as a general rule, personal property is taxable at the domicile of its owner. *Cooley on Taxation, 2 Ed. pp. 56-372, Burroughs on Taxation, Par. 40; 14 Ill. 163; 56 Am. Dec. 493; 12 Md. 464; 47 Conn. 477; 138 N. Y. 543; 10 Mass. 514; 17 Mass. 461; 4 Ed. Smith N. Y. 675; 34 N. J. Law, 45; 23 N. J. Law, 532; 24 N. J. Law, 56; 30 N. J. Law, 13; 11 N. Y. 565; 15 N. Y. 316; 122 Pa. State, 386; 14 Allen Mass. 366; 84 Iowa, 407; 17 Vermont, 609.*

In regard to assets evidenced by NEGOTIABLE BILLS, NOTES AND BONDS, there are two lines of decisions.

The view which is probably the more logical is, that the paper is mere evidence of indebtedness, and that the debt itself can have no actual *situs* wherever the paper may be; hence, the *situs*, in the eye of the law is, as in the case of ordinary debts, at the residence of the creditor. *131 Mass.*

24; 48 Ohio State, 648; 33 Iowa, 376; 16 Fed. Rep. 11; Cooley on Taxation, 2 Ed. p. 15; 15 Wall. 300; 30 La. An. 876; 31 Am. Rep. 232; 106 Ill. 25; 24 Pac. Rep. 182; 11 Sou. Rep. 393.

MONEY, while a mere medium of exchange, is, so far as taxation questions are concerned, a form of tangible personal property. It may be taxed at the owner's domicile, but is generally taxed where it is actually situated. *1 Nev. 397; 48 N. Y. 310; 2 McCrary (U. S.) 337; 44 La. An. 91; 66 How. Pr. New York, 190; 4 Blatchford, 263; Blackstone, Miller, 188 U. S. 187.*

LOUISIANA DECISIONS.

Meyer vs. Pleasant, Sheriff, 41 La. An. 645 (decided in 1889):

"Debts have their *situs* at the domicile of the creditor, "and they do not lose their *situs* because reduced to JUDG-"MENT at the domicile of the debtor."

The Court said:

"The tax collector affirmed the validity of the tax on the "ground that Section of *Act of 1880* directs that movable "property shall be assessed in the Parish where it is lo-"cated. This applies to tangible movables, but not to in-"corporeal rights generally, which follow the person of the "owner and are not susceptible of physical location. It is "well settled that the *situs* of a debt as property is at the "domicile of the creditor. 100 U. S. 496; 15 Wall. 300; "Cooley on Taxation, p. 15. A judgment is merely the "highest form of evidence of a debt. The Supreme Court "of the United States held that debts owing to foreign "creditors are not subject to taxation by a State, because "such a debt is a right personal to the creditor where he "resides, and the residence of his debtor is immaterial. "The fact that a foreign creditor had reduced his debt to a "judgment by proceedings necessary at the debtor's domi-

" cile could not subject the debt to taxation. We hold, " therefore, that the debt represented by this judgment is " not located in the Parish of Union, but has the same *situs* " after, as before, the judgment, namely, at the domicile of " the creditor. It is assessable and taxable only in the " Parish of Orleans, and as it forms part of the capital " and assets of the firm of V. & A. Meyer & Co., it has " presumably been assessed and taxed there." Pp. 646 and " 647.

Liverpool, etc. vs. Assessors, 44 La. An. 760 (decided in 1892):

" The issues are limited to all credits assessed for pre- " miums due."

" A debt to a non-resident of a State is not liable to be " taxed by a State in which he does not reside. His credits " are not within the State's jurisdiction. They are of no " value to the debtor. All the value there is in them be- " longs to the creditor, and is taxable at his domicile. " Cooley on Taxation, 2 Ed. p. 21; 15 Wall. 300; 11 Allen, " 268; 4 Woods, 206; 43 Maine, 497; 11 N. Y. 563; 7 " Minn. 198; 21 Vt. 152; 47 Conn. 477.

" All corporations are taxable on property within the State.

" Debts are not property when the creditor is not a resi- " dent of the State. 'We conclude,' says, Burroughs, p. 59, " 'that the situs of personal property for the purpose of " taxation depends in a great measure upon the nature of " the property.'

" As to debts, a number of trustworthy decisions hold " that 'corporations, it is also conceded, may be taxed like " natural persons on their property and business, but debts " owing to foreign *creditors, either corporations or individ-* " *uals, are not the subject of taxation.*'

" 'The creditor *cannot* be taxed, because he is not within " the jurisdiction, and the debts *cannot* be taxed in the " debtor's hands through any fiction of the law, which is to " treat them as being, for this purpose, the property of the " debtors. *They are not the property of the debtors in any*

" *sense*. They are the obligations of the debtor, and only " possess value in the hands of the creditors. *With them* " *they are property*, but to call them property in the hands " of the debtors is simply a misuse of terms. 27 Gratt. " 344; 11 An. 268; 67 Ga. 489; 22 Fed. Rep. 602; 106, Ill. " 25; 100 U. S, 496.

" The mere right of a foreign creditor to receive from " his debtor within the State the payment of his demand " cannot be subjected to taxation within the State. Cooley " on Taxation, p. 15." P. 764.

Railey vs. Assessors, 44 La. An. 765 (decided in 1892): " The question for our consideration is as to the possibility " of taxing credits. The judgment of the District Court " maintained plaintiff's demand, and ordered the said as- " sessment to be cancelled. The rule, *mobilia personam se-* " *quuntur*, this Court held that: debts and other incor- " poreal rights, when treated as property for the purposes " of taxation, can be assessed only at the domicile or place " of residence of the creditor, without regard to the domicile " of the debtor. The principle applies to corporations as " well as to natural persons. Hence, debts, due to a for- " eign corporation by residents of this State, cannot be taxed " in this State. *41 An. 1015*; *41 An. 645*." P. 768. These decisions settle the point.

" But counsel for the City claims that these decisions " apply merely the general rules to the title of movable " property following the owner in the absence of the Statute " of the State fixing the situs otherwise; and that they do " not apply in this case, because the Statute No. 106 of " 1890, under which the taxes claimed are levied, specially " authorized the taxation of 'credits' held by non-residents, " and that rules of comity must yield to express law. " This is sound and conclusive in so far as relates to *cor-* " *poreal movables* belonging to non-residents. (My italics).

" Such movables are subject to taxation. An exception " necessarily arises in so far as relates to certain incorporeal " rights.

" Of the enumeration on the assessment roll, everything " is thus eliminated, except the item of *'credits.'* And the

" evidence shows that these credits consist of nothing but " debts due the Companies for uncollected premiums. *The " simple question presented to us was whether the State pos- " sessed jurisdictional power to tax such mere credits due to for- " eign creditors.* (My italics).

" There is no doubt of the legislative power to modify " the rule of comity, *mobilia personam sequuntur*, in many " respects.

" Movables having an actual *situs* in the State may be " taxed there, though the owner be domiciled elsewhere. " Even debts may assume such concrete form in the evi- " dences thereof, that they may be similarly subjected when " such evidences are situated in the State, as in the case of " bank notes, public securities, and, possibly, of negotiable " promissory notes, bills of exchange or bonds.

" But as to mere ordinary debts, reduced to no such con- " crete forms, they are not capable of acquiring any situs dis- " tinct from the domicile of the creditor, and no legislative " power exists to change that situs so far as non-resident " creditors are concerned. As said by the Supreme Court " of the United States: 'To call debts property of the " debtors is simply to misuse terms.' All the property " there can be in the nature of things, in debts, belongs to " the creditors to whom they are payable, and follows their " domicile wherever that may be. The debts can have no " locality separate from the parties to whom they are due. " 15 Wall. 300.

"A State has no more power to subject such debts due to " foreign creditors to taxation than it would have to tax " the corporeal movables situated at the foreign domicile." P. 769.

Clason & Company vs. City, 46 La. An., p. 1 (decided in 1894):

" Moneys standing to the credit of a non-resident firm " on the books of a New Orleans bank are not taxable. " The relations between a bank and its customers are " those of creditor and debtor. The moneys are not spe- " cially deposited to be identically restored. They go into

" the bank's money with the understanding that they " might be used, and should be the basis of items of a " debit and credit account. Such a debt is not distin- " guishable from those due to the foreign firm from any " other cause." *Syllabus*, p. 1.

Referring to the method in which plaintiff conducts the business of purchasing cotton by an agent in New Orleans, the Court states the facts:

" When he gets an order to purchase, he pays for it " when shipped. He draws on the house in Manchester " and gets the money from the bank. He delivers a bill " of lading and against that bill he draws a bill of ex- " change which he deposits in bank and draws a cheque " to pay for the cotton. He sells exchange to the bank " (sometimes to parties other than the bank), which gives " him a cheque for the exchange. This he deposits in " bank and the firm is given credit for the amount against " which he checks. The question submitted to us is " whether these amounts standing in bank to the credit of " plaintiffs are subject to taxation." P. 4.

" We cannot distinguish between the debt due to the " plaintiff by a bank as arising from a deposit to the credit " of the firm in money and that due to it from any other " cause." P. 5.

Parker, Tax Collector, vs. Strauss, 49 La. An. 1173 (decided in 1897):

" The revenue act, in entire accordance with the con- " ceded extent of the taxing power, taxes the movable " property of the foreigner. We cannot hold that prop- " erty thus liable to taxation is exempted, because, for " convenience, it is deposited in bank and checked on by " the owner. It would be a strain to apply to the depos- " ited cash the exemption from taxation accorded to debts " in the ordinary significance due to the foreign creditor." P. 1175.

State ex rel. vs. Board of Assessors, 47 La. An. 1544 (decided in 1895):

"The rule established in Liverpool, London and Globe " Ins. Co., 44 An. 760, is that *credits* due to a non-resident " were assessable and taxable at the domicile of the owner; " but that decision made an exception in favor of *tangible* " *assets* and other personal property, and held that the " same were assessable at their actual situs." (My italics).

"But it has never been decided that tangible personal " property could not be assessed at the owner's domicile, " notwithstanding that its actual situs was abroad, in some " other State or country. State Tax on Foreign Held Bonds, " 15 Wall. 300, is not to the contrary; for, in that case, the " Court says: 'It is undoubtedly true that the actual situs " of personal property which has a visible existence, and " not the domicile of the owner, will, *in many cases*, deter- " mine the State in which it may be taxed. The same is " true of public securities consisting of State and Munici- " pal Bonds and *circulating* notes of banks. These by " general usage have acquired the character of and are " treated as property in the place where they are found, " though removed from the domicile of the owner.' But " that decision and others of like character only apply to " bonds and other *circulating* notes which are operated in " market and are bought and sold.

"This is the exact illustration that is given by Mr. Bur- " roughs, for he says that, when a person who resides in " one State has an agent in another State who loans or in- " vests money for him, on notes or other evidences of debt, " and then reinvests the proceeds of the loan in the same " State, such notes or evidences of debt are taxable in the " latter State. Burroughs on Taxation, p. 60.

"But such is not the situation of the bonds of the relator. " They are owned by the Insurance Company, but they are " not in circulation. They were doubtless purchased and " placed on deposit in the Treasury of the State of Georgia, " as an indemnity to secure the fulfillment of the company's " risk in that State. These are taxable assets here." P. 1545.

Comptoir National d'Escompte de Paris vs. Board of Assessors, 52 La. An. 1319 (decided in 1900): "Non-nego-

" tiable notes representing loans in Louisiana, made by the " agent of a corporation doing business therein, when kept " within the State by the agent may be subjected to taxa- " tion by the Law of the State in which they are held." *Syllabus, p. 1319.*

The Court referring to the case of *City vs. Stempel, 175 U. S. 309*, says: " The syllabus of that decision declares " that notes and mortgages, the owner of which is domiciled " in another State, when they are kept within the State by " an agent, may be subjected to taxation by the law of the " State in which they are held. A non-negotiable note is " certainly sufficiently concrete in form to be made an ob- " ject of taxation. The fact that it may be less valuable " in fact than it appears on its face may affect the estimate " to be placed upon it for assessment purposes, but that " question is something other than the question of its being " a proper object of taxation.

"We think that the facts in this case bring it squarely " under the decisions in *Bluefields Banana Co., 49 An. 43;* " *Parker vs. Strauss, 49 An. 1173.*

"In the former case this Court, referring to the corpora- " tion claiming exemption, said:

" The foreign corporation had an agent here, where it re- " ceived and where it sold fruit and received the price for " the same. Part of the proceeds were withheld in the hands " of the agents for the purposes incidental to the prosecu- " tion of its business, and part deposited to the credit of " the Company, subject to the cheque of its local agent, " also for the prosecution of its business here, and for such " other purposes as the Company might direct it to be ap- " plied to." P. 1332.

" There is no parallelism between this case and that of " *Clason vs. City, 46 An. 1.* The facts of the case are en- " tirely different. *Here the foreign corporation is engaged in* " *a regular business investing and reinvesting the moneys* " *through an agent in this State.*" (My italics.)

" In the other case, *Clason and Company* were merely " the agents of an English firm for the purchase of cotton " to be shipped by them, at once, to the firm in Europe.

" Instead of paying for this cotton by means of bills of " exchange transferred to the vendors, which they, them- " selves, would have cashed, the agents, for convenience, " had the bills cashed, deposited the amount in bank and " drew against the funds in favor of the sellers." P. 1332.

Thus, your Honors will see that no court has decided that a mere obligation, not in *concrete form*, is liable to taxation away from the domicile of the creditor. In the *Comptoir's* case, the Supreme Court of Louisiana maintained the validity of a tax upon *non-negotiable notes*, but it rested the decision upon the fact found by it, outside of the record, that the money which they represented was regularly retained here by its agent *for the purpose of investment and re-investment.*

The Court overlooked the fact, established clearly by its record, that its fluctuating surplus of $20,000, fixed by the lower court, to the satisfaction of opposing counsel, was the only sum thus employed, and was the sum on which the Comptoir paid its tax. In that case, as in the instant case, it was conclusively proven that all sums in excess of that amount were never retained here, but were immediately invested in foreign exchange. Of course, where the loan was represented by a draft of borrower with bill of lading attached, *the draft and debt were paid in Europe.* And 80% of its loans are of this character (T. p. 26). Of the remaining 20% of loans made, say, on warehouse receipts, and paid in New Orleans, its loans when thus paid were immediately invested in foreign exchange. There was necessarily an average fluctuating balance which, however, the Court fixed at $20,000, by a final judgment, never appealed from and acquiesced in as correct.

III.

OF COURSE, IN PAYING THE TAX UPON THIS AVERAGE BALANCE IN NEW ORLEANS, THE COMPTOIR RECOGNIZES THE CORRECTNESS OF THE DECISIONS THAT MONEY SENT BY A FOREIGN CREDITOR TO ITS LOCAL AGENT IN ANOTHER STATE, TO BE THERE EMPLOYED IN BUSINESS AND RETAINED THERE FOR INVESTMENT, UNDER THE PROTECTION OF ITS LAWS, IS LIABLE TO BE TAXED. UNDER SUCH CONDITIONS THE RULE, MOBILIA SEQUUNTUR PERSONAM, DOES NOT APPLY.

New Orleans vs. Stempel, 175 U. S. 309: "It is well "settled that bank bills and municipal bonds are in such "concrete tangible form that they are subject to taxa- "tion where found, irrespective of the domicile of the "owner; they are subject to levy and sale on execution and "to seizure and delivery under replevin. Notes and mort- "gages are of the same nature." *Syllabus, 310.*

The Court said: "It appears that these credits were "evidenced by notes legally secured by mortgages on real "estate in New Orleans, that these notes and mortgages "were in the City of New Orleans, in possession of an agent "of the plaintiff, who collected the interest and principal "as it became due, and deposited the same in a bank in "New Orleans, to the credit of the plaintiff. The question, "therefore, is distinctly presented whether, because the "owners were domiciled in the City of New York, the "money so deposited in a bank within the limits of the "State of Louisiana, and the notes secured by mortgages, "situated and held as above described, were free from tax "in the latter State. Of course, there must be statutory "warrant for such taxation, for if the Legislature omits any "property from the list of taxables, the Courts are not au- "thorized to correct the omission and adjudge the omitted "property to be subject to taxation." P. 312.

After reviewing the recent decisions of the Supreme Court of Louisiana, this Court proceeds: "From this re-

" view of the decisions of the Supreme Court of the State, " it is obvious that moneys, such as those referred to, col- " lected as interest and principal of notes, mortgages and " other securities kept within the State and deposited in " one of the banks of the State for their use or reinvestment, " are taxable under the Act of 1890. They are property " arising from the business done in the State; they were " tangible property when received by the agent of the " plaintiff, and as such, subject to taxation; and their taxa- " bility was not, as the Court holds, lost by their mere deposit " in a bank. It is true that, when deposited, the moneys " became the property of the bank, and for most purposes " the relation of debtor and creditor arose between the bank " and the depositor; but as evidently the moneys were to " be kept in the State for reinvestment or other use, they " remain still subject to taxation, according to the decision " in 49 La. An. 43.

" When the question is whether property is exempt from " taxation, and that exemption depends alone on a true " construction of the Statute of a State, the Federal Court " should be slow to declare any exemption in advance of " any decision by the courts of the State. The rule in such " a case is that the Federal courts, follow the construction " placed upon the Statute by the State courts, and in ad- " vance of such construction, they should not declare pro- " perty beyond the scope of the Statute and exempt from " taxation, unless it is clear that such is the fact. In other " words, they should not release any property within the " State from its liability to State taxation unless it is obvi- " ous that the Statutes of the State warrant such exemption, " or unless the mandates of the Federal Constitution com- " pel it." P. 316.

" If we look to the decisions of other States, we find the " frequent ruling that when an indebtedness has taken " a concrete form and becomes evidenced by notes, bills, " mortgage or other written instrument, and that writ- " ten instrument evidencing the indebtedness is left within " the State in the hands of an agent of a non-resident " owner, to be by him used for the purposes of collection

" and deposit or reinvestment within the State, its taxable " situs is in the State." P. 347.

The Court quotes from *Catlen vs Hull, 21 Vermont, 152*, as follows: "We are not only satisfied that this method of " taxation is well founded in principle and upon authority, " but we think it entirely just and equitable that, if per- " sons residing abroad bring their property and invest it " in this State for the purpose of deriving profit from its " use and employment here, and thus avail themselves of " the benefits and advantages of our laws for the protection " of their property, the property should yield its due pro- " portion towards the support of the government which " thus protects it." P. 317.

And again, the Court quotes from *Goldgart vs. People, 106 Ill. 25:* "If the owner is absent, but the credits are in " fact here, in the hands of an agent, for renewal or collec- " tion, with the view of reloaning the money by the agent " as a permanent business, they have a situs here for the " purpose of taxation and there is jurisdiction over the " thing." P. 318.

And again, the Court quotes from *State Tax on Foreign Held Bonds, 15 Wallace, 300:* "But other personal property, " consisting of bonds, mortgages and debts generally, has " no situs independent of the domicile of the owner, and " certainly can have none where the instruments, as in the " present case, constituting the evidences of debt, are not " separated from the possession of the owners."

" This last sentence, properly construed, is not to be " taken as a denial of the power of the Legislature to estab- " lish an independent situs for bonds and mortgages, where " those properties are not in the possession of the owner, " but simply that the fiction of law, so often referred to, de- " clares the situs to be that of the domicile of the owner, " a declaration which the Legislature has no power to dis- " turb when in fact they are in his possession." P. 320.

"It is well settled that bank bills and municipal bonds " are in such concrete tangible form that they are subject " to taxation where found, irrespective of the domicile of

" the owner; are subject to levy and sale on execution, and " to seizure and delivery under replevin; and yet, they are " but promises to pay and evidences of existing indebted- " ness.

"Notes and mortgages are of the same nature; and while " they may not have become so, are generally recognized " as tangible personal property; yet, they have such a con- " crete form that we see no reason why a State may not " declare that if found within its limits, they shall be " subject to taxation." P. 322.

Bristol vs. Washington County, 177 United States, 133.

" The personal property of a citizen of and resident of one " State invested in bonds and mortgages in another State, is " subject to taxation in the latter State." Syllabus, p. 133.

The Court said: " Our jurisdiction by direct appeal is " invoked on the ground that the application of the Con- " stitution of the United States is involved, and that a " law of the State is claimed to be in contravention of the " Constitution of the United States."

" The objections of the executor to the allowance of the " claim and his answer put forward the deprivation of " property without due process of law; the abridgment of " privileges and immunities of citizens of the United States; " and the denial of the equal protection of the laws, as the " violations of constitutional safeguards relied on." P. 139.

The Court said, quoting *In Re Jefferson, 35 Minn. 215:* " Thus corporeal personal property is conceded to be taxable " at the place where it is actually situated. A credit which " cannot be regarded as situated in a place merely because " the debtor resides there, must usually be considered as " having its situs where it is owned, at the domicile of the " creditor. The creditor, however, may give it a business " situs elsewhere, as where he places it in the hands of an " agent for collection or renewal, with a view to reloaning " the money and keeping it invested as a permanent busi- " ness." P. 144.

And this Court, referring to the notes of Mrs. Bristol, sought to be taxed, said: " But these notes were payable, " as before, at the office of the Agent in Minnesota; the

" mortgages securing the notes were retained by the agents, " and the notes were returned to the agents from time to " time, whenever required by them for the purpose of re- " newal, collection or foreclosure of securities. The agents " continued to collect the money due on the notes, and to " make loans in the name of Mrs. Bristol, sometimes under " her husband's direction, but generally on their own " judgment; and they remitted money to Mrs. Bristol " whenever she called for the same; while what was not re- " ceived by her was invested in new loans." P. 143.

"*In New Orleans vs. Stempel, 175 U. S. 309*, certain taxes " were levied on money on deposit, and also on money " loaned on interest, credits and bills receivable, and it was " held by this Court that the Statutes of Louisiana, as in- " terpreted by the Courts of that State, in authorizing such " assessment, did not violate the Constitution of the United " States. There the money, notes and evidences, were in " fact in Louisiana, although the owners resided elsewhere. " Still under the circumstances of the case before us, we " think, as we have said, that the mere sending of the notes " to New York and the revocation of the power of attorney " did not take these investments out of the rule." P. 144.

Bluefields Banana Company vs. Board of Assessors, 49 La. An. 43 (decided in 1897):

" A foreign corporation has an agent here where it " receives and where it sells fruit and receives the paper for " the same. Part of the proceeds were withheld in the " hands of the agents for the purposes incidental to the " prosecution of its business and part deposited to the credit " of the Company, subject to the cheque of its local agent, " for the prosecution of its business here and for such " purposes as the Company might direct it to be applied to. " The Company transacts business in New Orleans, pre- " cisely as do resident business men and firms.

" *Held:* An assessment of the cash in bank of said cor- " poration is proper and warranted by the provisions of " Act 106 of 1890, an act to provide an annual revenue for " the State. The rule, *mobilia sequuntur personam*, is a fic-

" tion of the law, not resting, of itself, upon any constitu-
" tional foundation and which gives away before express
" law." *Syllabus*, p. 43.

Referring to the Clason case, the Court said: " If
" foreign merchants were subjected to taxation on moneys
" sent here simply for the payment of the price of property
" bought for immediate export, some of which, in all pro-
" bability, merely passed *in transitu* through the State for
" shipment, and some of which presumptively has been al-
" ready taxed, it is very obvious that the trade of the
" City of New Orleans would be very seriously and inju-
" riously affected unless the parties, by a mere shifting of
" the mode of doing business and making payments should
" avoid the tax.

" The Court did not think it was justified in assuming
" that it was the intention of the Legislature (even if it
" were authorized so to do) that moneys in bank deposited
" here for the special purpose of paying for cotton bought
" for immediate export to Europe should be taxed." P. 48.

In **Blackstone vs. Miller, 188 U. S. p. 189**: " Where a de-
" posit made by a citizen of Illinois in a Trust Company in
" the City of New York remains there fourteen months, the
" property is delayed within the jurisdiction of New York
" long enough to justify the finding of the State Court that
" it was not *in transitu* in such a sense as to withdraw it from
" the power of the State if it were otherwise taxable, even
" though the depositor intended to withdraw the funds for
" investment.

" Under the laws of New York, such deposit is subject to
" the transfer tax, notwithstanding that the whole succes-
" sion had been taxed in Illinois, including this deposit."
Syllabus, p. 189.

" The deposit in question represented the proceeds of
" railroad stock sold to a syndicate and handed to the Trust
" Company, which, by arrangement with the Testator, held
" the proceeds subject to his order, paying interest in the
" meantime." P. 202.

" It is probable, of course, that he did not intend to leave

" the fund there forever and that he was looking out for " investments, but he had not found them when he died. " The tax is levied under a Statute imposing a tax 'upon " the transfer of any property real or personal.'" P. 203.

" In view of the State decisions, it must be assumed that " the New York Statute is intended to reach the transfer " of this property if it can be reached. *New Orleans vs.* " *Stempel, 175 U. S. 309, 316; Morley vs. Lake Shore & Mich-* " *igan Southern Railway Co. 146 U. S. 162, 166.* We also " must take it to have been found that the property was not " *in transitu* in such a sense as to withdraw it from the " power of the State, if otherwise the right to tax the trans- " fer belonged to the State. The property was delayed " within the jurisdiction of New York an indefinite time, " which had lasted for more than a year, so that this find- " ing at least was justified. *Kelly vs. Rhoads, ante p. 1, and* " *Diamond Match Co. vs. Village of Ontonagon, ante p. 84.*" P. 203.

" The question then is narrowed to whether a distinction " is to be taken between tangible chattels and the deposit " in this case. There is no doubt that courts in New York " and elsewhere have been loath to recognize a distinction " for taxing purposes between what commonly is called " money in the bank and actual coin in the pocket. The " practical similarity more or less has obliterated the literal " difference." P. 205.

"Power over the person of the debtor confers jurisdiction, " we repeat. And this being so, we perceive no better " reason for denying the right of New York to impose a " succession tax on debts owed by its citizens than upon " tangible chattels found within the State at the time of " the death. The maxim, *mobilia sequuntur personam,* " has no more truth in the one case than in the other. " When logic and the policy of a State conflict with a " fiction due to historical tradition, the fiction must give " way.

"There is no conflict between our views and the point " decided in the case reported under the name of State

" Tax on Foreign Held Bonds, 15 Wall. 300. The taxation " in that case was on the interest on bonds held out of the " State. Bonds and negotiable instruments are more than " merely evidences of debt. The debt is inseparable from " the paper which declares and constitutes it by a tradi- " tion which comes down from more archaic conditions." P. 206.

Walker vs. Jack, 88 Fed. Reporter, 580. "The case be- " fore the Court was that of the attempted taxation of an " itinerant peddler, a non-resident of Ohio, who owned " notes secured by mortgages on land in Butler County, " Ohio, who visited that country, each year, to collect in- " terest and as much of the principal as was due, brought " the notes and mortgages with him into the State and " took them away with him when he left it. It was held " that the notes were not subject to taxation, because he " had no resident agent hold the notes for him." P. 580.

"Where a resident of one State has exclusive control and " management of money, FOR INVESTMENT of foreign capi- " talists, some of which is invested in his State, and the " securities are made and held by him in his own name in " such State, they are taxable in that STATE." *Hutchinson " vs. Board of Equalization, 66 Iowa, 35.*

" If the negotiable notes, bills or bonds in question ARE " IN THE HANDS OF AN AGENT, they can probably be taxed " at the agent's residence, as being property in an agent's " possession, and, hence, coming under the general rule " which governs such property. The agent must, however, " be authorized to do some act in reference to the negoti- " able paper. If the owner keeps exclusive control of it " it is still in his possession.

"In other words, there must be a *bona fide* agency. *35 " Minn. 215; 48 N. Y. 390; 21 Vt. 152; 87 N. C. 122; 47 " Mo. 594; 1 Clark Ch. N. Y. 42; 19 Neb. 50; 15 Kansas, 68; " 19 Wall. U. S. 490: 8 Kansas 565; 40 Ill. 197; 112 Ill. " 272 85 N. Y. 369; 80 N. Y. 576.*

IV.

A FOREIGN CORPORATION STANDS UPON THE SAME FOOTING AS AN INDIVIDUAL IN RESPECT TO ITS CREDITS ARISING FROM OBLIGATIONS INCURRED IN ANOTHER JURISDICTION, NOR DOES IT BY SUCH LOANS BRING ITS ENTIRE CAPITAL INTO THAT JURISDICTION.

Liverpool, Etc., vs. Assessors, 44 La. An. 760 (decided in 1892):

"Instead of carrying on business through a personal "agency, the Liverpool, London and Globe Insurance Co. "has a Board of Directors and Secretary appointed by "itself. The business carried on by this board does not "have the effect of localizing the company itself to a "greater extent than if the business were conducted by an "agency not organized under a board.

"The premiums of foreign companies are all collected "through local agencies, and the losses are adjusted by "these agencies.

"Whether represented by a board of their selection or "by agents, they remain foreign companies, and in so far "as relates to residence the same rule applies.

"The companies are the owners of the assets, payment "of losses, made here in cash or by drafts sent by the home "companies, do not change the status in so far as relates "to a business residence." P. 763.

Gloucester Ferry Company vs. Pennsylvania, 114 U. S. 196:

This Court cited, with approval, *St. Louis vs. Ferry Company, 11 Wall. 423, and Railroad Co. vs. Pa., 15 Wall. 300*, and then stating that the Supreme Court of Pennsylvania in the case of Commonwealth vs. Standard Oil Co., 101 Pa. State, 119, had decided, "that the position of "the Commonwealth that a foreign corporation entering "the State to do business, brought its entire capital, was "ingenious, but unsound; that it was a fundamental

" principle that, in order to be taxed, the person must have " a domicile in the State, and the thing must have a *situs* " therein; that persons and property *in transitu* could not " be taxed; that the domicile of a corporation was in the " State of its origin, and it could not emigrate to another " sovereign; that the domicile of the Standard Oil Com- " pany was in Ohio, and, when it sent its agents in the " State to transact business, it no more entered the State " in point of fact than any other foreign corporation, firm " or individual, who sent an agent there to open an office " or branch house, nor brought its capital there construct- " ively; that it would be as reasonable to assume that a " business firm in Ohio brought its entire capital there " because it sent its agent to establish a branch of its busi- " ness, as to hold that the Standard Oil Company, by em- " ploying certain persons in the State to transact a portion " of its business, thereby brought all of its property or cap- " ital stock within the jurisdiction of the State; that there " was neither reason nor authority for such a proposition; " that the company was taxable only to the extent that it " brought its property within the State; and that its cap- " ital stock, as mentioned in the Act of the Legislature, " must be construed to mean so much of the capital stock " as was measured by the property actually brought within " the State by the company in the transaction of its busi- " ness.

"The Justice, who delivered the opinion of the Court, " said, speaking for himself, that he conceded the power " of the Commonwealth to exclude foreign corporations " altogether from her borders or to impose a license tax so " heavy as to amount to the same thing; but he denied, " great and searching as her taxing power is, that she " could tax either persons or property not within her juris- " diction. 'A foreign corporation,' he said, 'has no domi- " cile here and can have none; hence it cannot be said to " draw to itself the constructive possession of its property " located elsewhere. There are a large number of foreign " insurance companies doing business here under a license " from the State. Some of them have a very large capital.

" It is usually invested at the domicile of the company. If " the position of the Commonwealth is correct, she can tax " the entire property of the Royal Insurance Company, " although the same is located almost wholly in England, " or the assets of the New York Mutual, located in New " York.' And, thereupon, this Court held: 'Under this " decision there is no property held by the Gloucester " Ferry Company which can be the subject of taxation in " Pennsylvania, except the lease of the wharf in that " State.'" Pp. 209-210.

I submit that, except with respect to the fluctuating balance of $20,000, all the money loaned by the Comptoir, obtained by the sale of exchange, handed, as obtained, to the borrower, or furnished by permitting him to draw on Europe, could not be considered as money in the possession of the Comptoir. The most that could be said of it is that it was essentially an abstraction *in transit* through the State.

V.

WHILE THE STATE HAS NOT THE POWER TO LOCALIZE AN ABSTRACT CREDIT, IT MAY TAX TANGIBLE PERSONAL PROPERTY AT THE PLACE OF ITS LOCATION AWAY FROM THE DOMICILE OF ITS CREDITORS.

TANGIBLE PERSONAL PROPERTY is assessed sometimes at the domicile of the owner; sometimes at the place where it is situated. *25 Cal. 30; 39 Cal. 112; 21 Ind. 335; 27 Ind. 288; 92 Ind. 222; 26 Ill. 300; 79 Am. Dec. 377; 53 Ill. 45; 80 Ky. 489; 3 Md. 259; 16 Gray, Mass. 292; 60 Miss. 142; 15 N. J. Law, 320; 23 N. J. Law, 517; 17 Nev. 383; 7 Rhode Island, 317; 2 Spears, S. C. 719; 14 B. Monroe, Ky. 521; 91 Ala. 398; 114 U. S. 622.*

THE STATE may, however, and often does, make it tax-

able at its actual *situs*. *Dillon on Municipal Corporations, 4 Ed. Par. 786; Welty, Assessments, Par. 34; 26 Ill. 300; 79 Am. Dec. 377; 23 N. J. L. 517; 23 N. Y. 224; 51 Barb. N. Y. 352.*

St. Louis Ferry Company, 11 Wall. 423: "In the eye of "the law, personal property, for most purposes, has no lo- "cality. *Mobilia sequuntur personam; immobilia situm. Mo- "bilia non habent sequelam.* In a qualified sense, it accom- "panies the owner wherever he goes, and he may deal with "it or dispose of it according to the law of his domicile. If "he dies intestate, that law, wheresoever the property "may be situate, governs its disposal and fixes the entries "and shares of the different and several distributees. But "this doctrine is not allowed to stand in the way of taxing "power in the locality where the property has its actual "situs and the requisite legislative jurisdiction exists, such "property is undoubtedly liable to taxation there in all "respects as if the proprietor were a resident of the same "locality." P. 430.

Tappan vs. Merchants National Bank, 19 Wall. 490: "The power of taxation by any State is limited to persons, "property or business within its jurisdiction. Personal "property, in the absence of any law to the contrary, fol- "lows the person of the owner and has its situs at his dom- "icile. But, for the purpose of taxation, it may be sepa- "rated from him, and he may be taxed on its account at "the place where it is actually located. These are familiar "principles, and have often been acted upon in this Court "and in the Courts of Illinois. If a State has actual juris- "diction of the person of the owner, it operates directly "upon him. If he is absent, and it has jurisdiction of his "property, it operates upon him through his property.

"Shares of stock in National Banks are personal prop- "erty. They are made so by express terms by the Act of "Congress under which such banks are organized. They "are a species of personal property which is, in one sense,

" intangible and incorporeal. But the law which creates " them may separate them from the person of the owner " for the purposes of taxation, and give them a situs of their " own." P. 499.

De Vignier vs. City, 16 Federal Reporter, p. 12: "But in- " dependent of these legislative acts, the law must be that, " in the absence of any provisions of the Statute, which " had entered into and formed part of the contract, giving " the right to impose a tax, bonds or other obligations of a " city, which belonged to non-residents, could not be taxed " without impairing the force of the obligation itself; for, " as a rule of law, where there is no pre-existing legisla- " tion, they have no *situs* except that which is imputed by " the residence of the owner, and to attempt to tax outside " of that residence is to add to the qualities of personal " property that of having an artificial and forced location, " contrary to the settled rules which govern that class of " property."

United States vs. Bank, 8 Robinson La. Report, p. 262, (decided in 1844): "An assignment of property, real or per- " sonal, to the trustees for the benefit of the creditors of " the assignor, legal and valid by the laws of the State by " which it was made, and accompanied by delivery, will be " respected in this State." *Syllabus, p. 262.*

"In a few of the States, it has been held that a transfer " by assignment does not protect the property from attach- " ment, subsequently to the bankruptcy or insolvency; but " that, we think, a harsh interpretation of the law, and we " shall certainly not extend it to any one not a citizen of " our own State.

" We consider the doctrine as well settled now, that per- " sonal property has no locality, and that the laws of the " owner's domicile should, in all cases, determine the valid- " ity of the transfer or alienation, unless there is some posi- " tive or customary law of this country to the contrary." P. 414.

VI.

THE LEGISLATURE OF LOUISIANA HAS NEVER ATTEMPTED TO LOCALIZE MERE DEBTS DUE TO FOREIGN CREDITORS, FOR THE PURPOSE OF TAXATION, AND SUCH ATTEMPT, IF MADE, WOULD BE IN VIOLATION OF THE CONSTITUTION OF THE STATE.

Act of the Legislature 170, of 1898, is an act to provide an annual revenue to the State of Louisiana, etc.

" Section 1. Be it enacted by the General Assembly of " the State of Louisiana, that for the calendar year, A. D. " 1898, and for each succeeding calendar year, there are " hereby levied annual taxes amounting in the aggregate " to six mills on the dollar of the assessed value *of all prop-* " *erty situated within the State of Louisiana*, except such as is " expressly exempted from taxation by law, and the term " property, as herein used, means and includes * * * mov- " able property and chattels; all personal property * * * " the cash value of all judgments, debts and causes of ac- " tion; all rights, credits, bonds and securities of all kinds; " promissory notes, open accounts and other obligations; " all cash; all movable and immovable, corporeal and in- " corporeal, articles or things of value owned and held and " controlled within the State of Louisiana by any person in " any capacity whatsoever." Pp. 346, 347, 348. (My italics).

Section 7. "Be it further enacted, etc., that it is made " the duty of the tax assessors throughout the State to " place upon the assessment rolls or lists all property sub- " ject to taxation; * * * * and provided " further, that in assessing mercantile firms the true intent " and purpose of this Court shall be held to mean, the " placing of such value upon the stock in trade, all cash, " whether borrowed or not, moneyed interest, open ac- " counts, credits, etc., etc., as will represent in the aggregate " a fair average on the capital, both cash and credit, em- " ployed in the business of the party or parties to be

" assessed. *And this shall apply with equal force to any person* " *or persons representing in this State the business interests that* " *may claim a domicile elsewhere.* The intent and purpose " being that no non-resident, either by himself or through " an agent, shall transact business here without paying to " the State a corresponding tax with that exacted of its own " citizens and all bills receivable, obligations or credits " arising from the business done in this State, are hereby " declared assessable and within this State and at the " business domicile of the said non-resident, his agent or " representative." P. 350. (My italics).

The Legislature, in defining *what shall alone be taxed*, limits its taxation to property within the State.

The assessors are directed to assess foreign credits. But the Supreme Court of Louisiana has held and now holds that this *direction* only applies to *tangible* movables.

Liverpool vs. Assessors, 44 La. An. 760 (decided in 1892): " The proposition of counsel for defendant, that the Stat- " ute, *No. 106 of 1890*, under which the taxes here claimed " are levied, authorizes the taxation of credits held by non- " residents, is true.

"The Statute must be applied *in so far as relates to tan-* " *gible movables* belonging to non-residents, and as to them, " the general rule recognized by the comity of States, " *mobilia personam sequuntur*, must yield." (My italics).

"The Supreme Court of the United States on this " subject said: 'It is undoubtedly true that the " actual situs of personal property, which has a " visible and tangible existence, and not the domi- " cile of the owner, will, in many cases, determine the " State in which it may be taxed. The same thing is true " of public securities, consisting of State and Municipal " bonds and circulating notes of bank. These, by general " usage, have acquired the character of and are treated " as property in the place where they are found, though re- " moved from the domicile of the owner.' 15 Wall. 300. " We are dealing exclusively with the question of credits

" as assessed, and we hold, as decided in *41 An. 645, 1015*,
" that debts have their situs at the domicile of the creditor,
" because debts are property, and have a value which is in-
" separable from the creditor, and because the State has no
" greater power or jurisdiction to tax debts due to non-
" residents, creditors, than it has to tax any other personal
" property of such non-residents which is not situated in
" the State.

" The want of jurisdiction and power would render it
" useless to maintain the general rule applying to tangible
" movables." Pp. 764-765.

Act 106 of 1890, being the Annual Revenue Act for that year, is in *Section 1, p. 121, and Section 7, p. 124, and is in these provisions identical with Act 170 of 1898.*

Railey vs. Assessors, 44 La. An. 766. "An exception
" necessarily arises in so far as it relates to certain incor-
" poreal rights. As to these the tax laws have no extra-
" territorial effect." P. 768.

Liverpool, etc., vs. Assessors, 51 La. An. 1028 (decided in 1899):

"Taxes imposed upon a non-resident, whose property
" is not in the State, are null, as tax laws can have no
" extra-territorial effect. Debts due to a non-resident (still
" in non-concrete form) have their situs at the domicile of
" the creditor, and not at the domicile of the debtor." Syl-
" labus, 1028.

" The position of plaintiff is that credits due the com-
" pany for uncollected premiums are only taxable at the
" domicile of the company. This is controverted by the
" defendants, who urge, in substance, that the plaintiff's
" 'credits' fall within the grasp of the Revenue Law
" adopted in 1890, taxing the property of non-residents.
" *The whole theory of taxation under the Constitution of 1879,*
" *which governs in this cause, was based on the idea that the*
" *taxes were a property tax, and that the property assessed*

" *should be seized and sold to satisfy the taxes for which it* " *was assessed.*" (My italics).

"*The old method of recovering taxes by suit against the* " *debtor was abolished, and in its place the Constitution or-* " *dained that the property assessed should be seized and sold* " *for taxes. No great difficulty should now arise in assessing* " *and collecting the taxes on every item of property assessed in* " *the Revenue Act as subject to taxation.*

"*Now, as to debts, a mere debt, a promise to pay, has no* " *value within the limits of the State if it be due to one not* " *domiciled in the State.*

" Its value is at the domicile of the creditor, where it has " its situs. It is not property save at the domicile of the " creditor. *If assessed and sold for taxes, we are inclined to* " *think that the title would be greatly wanting in essentials to* " *perfect a legal title.*" P. 1029.

" There is no question in the case before us for decision " of cash, which is undeniably a tangible movable subject " of taxation." P. 1033.

" In a former law, *i. e.*, the law of 1886, all 'credits' were " subject to taxation, due by any 'person, company, asso- " ciation or corporation, *in and out of this State,*' and all " 'credits,' held, controlled or administered by 'agents' and " others in this State.

" Section 1 of the Act, as in the Act of 1890. The Reve- " enue Law enacted in 1888 is substantially the same, and " was not less broad than the Act of 1890.

" In the Law, requiring 'debts' owned by foreigners to be " assessed for taxation, as we take it, it was intended for all " such debts as are evidenced by note or by mortgage, or " that are in such other concrete form as to render it pos- " sible to subject them to taxation under the present laws. " No attempt has been made since the cited decisions were " rendered to localize the 'debts' 'open accounts,' such as " those upon which the taxes are now claimed.

" The State of Louisiana possesses jurisdiction for pur- " poses of taxation under present laws, over bonds owned " by corporations actively engaged in business within " the State, without regard to the owner's demand, also

" judgments; such bonds and judgments being in themselves property which may have a situs away from the " owner's domicile.

" As to 'open accounts' with a foreign company, for such " protection as it may offer, *the law to date has not localized " them so as to render it possible to assess them here and sell " them for taxes.* While it may be that a domicile in the " State as to those accounts may well be required as a condition precedent to the foreign company's business in the " State, they cannot, in our view, be assessed here as foreign 'credits' under the wording of the present law." P. 1033. (My Italics).

I therefore submit, that a receipt for money loaned on a foreign bill of exchange, with bill of lading attached, and which is immediately sent out of the State; or a cheque drawn on a credit opened in Paris or London, or for the value of a foreign bill of exchange sold, and which cheque merely evidences *not the debt, but only serves as a memorandum of the amount thereof,* are not credits in concrete form, but are open accounts which, under the laws of Louisiana, cannot be taxed.

I submit that the judgment appealed from should be affirmed and I so ask.

Respectfully submitted,

HARRY H. HALL,

Solicitor of Complainant.

OCTOBER, 1903.